

Amendments to the Drawings:

The Examiner accepted the drawings filed of 30 Sep. 2004 and therefore no amendments are made to the drawings.

REMARKS/ARGUMENTS

Examiner Telephone Interaction: This will acknowledge the Examiner's helpful interaction with applicants' attorney to answer some questions regarding the filing of the attached Declaration under 37 CFR §1.132 with a color chart. The undersigned attorney has decided to mail in the response by Express Mail in an attempt to get the affidavit with the color chart to the Examiner. If for any reason the color chart does not get to the Examiner, the Examiner is asked to call Applicants' Attorney at the number below and the Attorney will attempt to get the chart to the Examiner by *e-mail*.

Summary of Action: The Office Action of Aug. 08, 2006 stated that Claims 1-31 are pending in the application. Claims 1-24 are withdrawn from consideration because they were not elected and Claims 25 - 31 are rejected. Claims 25-29 are rejected under 35 USC § 102 (e) as being anticipated by Floriano. Claims 25 & 26 are rejected under 35 USC § 102 (e) as being anticipated by Vanderberg and Claims 25, 26 and 28-31 are rejected as being anticipated within the meaning of 35 USC § 102 (b) by Muller. Applicants respectfully traverse each objection to the specification and drawings and each rejection of the claims.

Drawings: Applicants acknowledge that the drawings filed 30 September 2004, are accepted by the Examiner.

Restriction/Election: Claim 1-31 have been withdrawn as the result of an earlier restriction requirement. In view of the Examiner's earlier restriction requirement, applicant retains the right to present claims 1-24 in a divisional application. In the interests of moving prosecution forward, Applicants cancel Claims 1-24 subject to a Divisional application.

Rejection based on Floriano: Claims 25-29 are rejected under 35 USC § 102 (e) as being anticipated by Floriano. Applicants respectfully traverse this rejection because all the claimed elements are not shown by Floriano nor does Floriano operate in the same manner. Applicants contend in part that the reliance on language that begins "(A)lthough not expressly stated..." is a realization that all the elements are not shown. An anticipating reference under §102 should actually contain all of the claimed elements without relying on conjecture. Floriano is a membrane based detection system where

microbes are captured by a membrane or particles that are "read" by a detector. The device does not employ a light emitting device operating at a wave length of 260 to 280 nanometers or employ a flow through detection system that directly reads the analyte. The amended claims now read more accurately on Applicants' invention and distinguish from the cited reference.

Rejection based on Vanderberg: Claims 25, & 26 are rejected under 35 USC § 102 (e) as being anticipated by Vanderberg. Applicants respectfully traverse this rejection because not all of the claimed elements are shown in the cited reference and the attached declaration shows an unexpected superior result for the claimed device. The inventor, Dr. Fell, compared the results obtained during his tests with the results shown in the Vanderberg patent and found a 200 fold improvement in results by the currently claimed device. This result is unexpected for the differences in the structure of the Vanderberg batch process and the instant invention. The amended claims now read more accurately on Applicants' invention and distinguish from the cited reference.

Rejection based on Muller: Claims 25, 26 and 28-31 are rejected as being anticipated within the meaning of 35 USC § 102 (b) by Muller. Applicants respectfully traverse this rejection. Muller describes a series of "spot" tests that depend on binding the analyte to a selected place on the test strip and reading the results. Applicants' device is a flow device with no "test strips". The claimed invention is a flow device that depends on the "glow" of the test sample to determine concentration of microbe. The amended claims now read more accurately on Applicants' invention and distinguish from the cited reference.

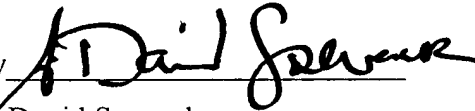
Applicant respectfully requests that a timely Notice of Allowance be issued in this case. The Director is hereby authorized to charge any additional fees or underpayments under 37 C.F.R. § 1.16 & 1.17; and credit any overpayments to Deposit Account No. 19-2201 held in the name of U.S. Army Materiel Command.

Certificate of Transmission under 37 CFR § 1.8

I hereby certify that the above AMENDMENT & RESPONSE; REQUEST FOR ENLARGMENT OF TIME TO RESPOND; PETITION TO ACCEPT COLOR CHART;

AND DECLARATION is being mailed by Express mail Label # EE571876885US to the United States Patent & Trademark Office on 17 NOVEMBER 2006

Respectfully submitted,
Intellectual Property Counsel
U.S. Army Research Laboratory

By 

A. David Spevack
Reg: No. 24,743
Tel.: 301-394-1714
FAX: 301-394-3972
e-mail: dave.spevack@us.army.mil

ATTN:
Army Research Laboratory
AMSRD-ARL-0-CC-IP
2800 Powder Mill Road
Adelphi, Maryland 20783-1197

Attachments